

AGENDA BILL APPROVAL FORM

Agenda Subject: Adoption of Resolution No. 4476, extending for six months. the moratorium on development within the 100-year FEMA floodplain		Date: April 22, 2009						
Department: Planning	Attachments: Resolution No. 4476	Budget Impact: none						
Administrative Recommendation: City Council adopt Resolution No. 4476.								
Background Summary: On November 17, 2008, Auburn City Council enacted an initial six month moratorium on development within the Federal Emergency Management Agency (FEMA) identified 100-year floodplain. This moratorium was issued as a result of the finding by the National Marine Fisheries Service (NMFS) that administration of the National Flood Insurance Program jeopardizes Endangered Species. The purpose of the moratorium was to give these federal agencies time to complete technical assistance for local jurisdictions, and in the interim, limit liability to private parties and the city. <u>Since the November 17th Council meeting, City staff has taken the following actions:</u> <ul style="list-style-type: none"> City staff formed a staff floodplain moratorium working group to review development proposals and move forward those projects that have no impact on the floodplain (i.e. interior remodels, removal of fill or impervious surface, demolition, etc.) Staff organized and led a public information meeting on the moratorium and Biological Opinion on December 10th. Over 50 people were in attendance. After testimony on this issue at the January 5th Council public hearing, the Mayor requested that Planning Staff form a community task force to assist in resolving this issue. Council approved an amendment to the moratorium (Resolution No. 4442), allowing processing of boundary line adjustments, environmental review applications, and development applications on those portions of a property not wholly impacted by the 100-year floodplain. The community task force has met three times, and is scheduling another meeting for mid to late May. Staff have been communicating with FEMA and NMFS, and Auburn organized a regional meeting on the Biological Opinion on March 23rd. There were close to 50 people in attendance, and representatives from our community task force, six other jurisdictions, and FEMA. <div style="display: flex; justify-content: space-between;"> L0504-2 O3.10.8 </div>								
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Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Call for Public Hearing <u>5 / 18 / 2009</u> Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____								
Councilmember: Norman		Staff: Baker						
Meeting Date: May 4, 2009		Item Number: VIII.B.1						

Agenda Subject: Adoption of Resolution No. 4476, extending for six months the moratorium on development within the 100-year FEMA floodplain

Date: April 22, 2009

FEMA currently estimates that a model ordinance will complete the Endangered Species Act review process this Fall and be available for local jurisdictions to adopt. In the meantime, in order to continue to limit liability for private parties and the City, staff is recommending extending the moratorium six months to await the model ordinance.

RESOLUTION NO. 4 4 7 6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, EXTENDING THE MORATORIUM CREATED AND ESTABLISHED BY RESOLUTION NO. 4416, AS AMENDED BY RESOLUTION NO. 4442, RELATED TO THE FILING, RECEIPT, AND APPROVAL OF APPLICATIONS FOR DEVELOPMENT WITHIN AREAS OF THE CITY LOCATED WITHIN, IN WHOLE OR IN PART, FLOODPLAINS AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION

WHEREAS, Section 35A.63.220 of the Revised Code of Washington (RCW) authorizes the City Council to establish a moratorium for an initial period of six months, subject to subsequent extensions, approved by separate council action, provided that a subsequent public hearing is held on the moratorium within at least sixty (60) days of its adoption, at which time findings of fact could be made; and

WHEREAS, the City of Auburn has territory within its corporate boundaries that is located within both the current and the proposed Federal Emergency Management Administration (FEMA) designated floodplains; and

WHEREAS, FEMA and the National Marine Fisheries Service (NMFS) have collaborated on a position paper that seeks to prevent continued degradation of existing floodplain, and to promote low impact development in floodplain areas of the region that could effect endangered species; and

WHEREAS, the guidelines and ultimate responses and strategies to address the FEMA/NMFS concerns have not yet been fully developed and implemented; and

WHEREAS, FEMA and NMFS have taken the position that if a permitting agency, such as the City of Auburn, grants permits in floodplain areas within its

boundaries that are later determined to adversely impact the floodplains and/or endangered species, the permitting agency will be liable for the resulting "take" on endangered species; and

WHEREAS, FEMA and NMFS recommend that jurisdictions that have territory within the floodplains employ moratoria to preserve and protect endangered species and to avoid the take of such endangered species through development that does not meet their intended goals of low impact development; and

WHEREAS, even though the City has implemented and enforced FEMA's minimum standards as they existed prior to this recent NMFS biological opinion, NMFS has determined that FEMA's standards are not sufficient to avoid the taking of endangered species; and

WHEREAS, pursuant to Resolution No. 4416, the Auburn City Council created and established a moratorium on the filing, receipt and approval of applications for development within areas of the City located within, in whole or in part, floodplains as depicted in the most currently approved floodplain maps as published by FEMA, and scheduled a public hearing for January 5, 2009 as required by statute; and

WHEREAS, following the public hearing on the moratorium heard on January 5, 2009, the City Council adopted Resolution No. 4442, which modified the moratorium to assure that any development that does occur within floodplains within the City of Auburn develops in a way that meets the requirements of FEMA and NMFS to preserve and protect endangered species, and that a moratorium to assure such compliance is appropriate until the regulations have been developed which would implement the

strategies of protecting the endangered species in floodplain development, taking into account the concerns expressed at said public hearing; and

WHEREAS, pursuant to Section 35A.63.220 RCW, a public hearing was held on this date, wherein persons wishing to express their thoughts and concerns about the proposed moratorium extension were afforded the opportunity to do so.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. Findings. The Council adopts the recital clauses of this Resolution, and those of Resolution Numbers 4416 and 4442, as Findings of Fact, where applicable, and further finds that FEMA and NMFS have still not provided standards to the City that allow for development in the floodplain while adequately protecting endangered species, necessitating an extension of the moratorium;

Section 2. Extension of Moratorium. The City Council hereby extends the moratorium established by Resolution No. 4416 and amended by Resolution 4442 for an additional six (6) months after the expiration of the moratorium period provided for in Resolution 4416. All other conditions of Resolution 4416 as modified by Resolution 4442 shall remain in full force and effect.

Section 3. Terms of Moratorium. The moratorium as established and created by Resolution No. 4416, as modified by Resolution 4442, and extended by this Resolution shall continue to be in effect for a period of six (6) months beginning May 18, 2008 unless repealed, extended or modified by the City Council in accordance with RCW 35A.63.220. Provided, that the moratorium shall automatically expire upon the

effective date of a City of Auburn ordinance establishing and implementing strategies to meet the FEMA/NMFS floodplain development/endangered species concerns.

Section 4. Administrative Implementation. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 5. Effective Date. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2009.

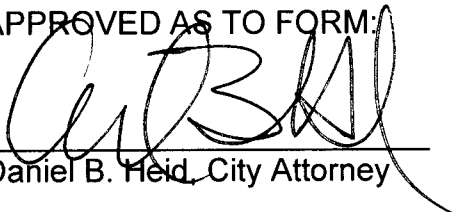
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney